

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In Re:	:	
Denise M West White	:	Case No. 10-64129
	:	
SSN(s): xxx-xx-8077	:	
	:	A.P. No. 11-ap-
<i>Debtor</i>	:	
	:	Judge Caldwell
	:	
Denise M West White	:	
2849 Ambarwent Road	:	
Reynoldsburg, OH 43068	:	
Plaintiff,	:	
v.	:	
US Bank Home Mortgage	:	
4801 Frederica Street	:	
Owensboro, KY 42301	:	
Defendant.	:	

---

**COMPLAINT UNDER §506 and §1322(b)(2) OF THE BANKRUPTCY CODE TO  
AVOID A WHOLLY UNSECURED MORTGAGE**

The Plaintiff, Denise M West White, for his Complaint against the Defendant, alleges as follows:

**INTRODUCTION**

1. This adversary action is filed to have this Court determine that the wholly unsecured second mortgage held by US Bank Home Mortgage on her residence may be modified, and treated in this Plan as unsecured, and then canceled following the Debtor's receipt of a Chapter 13 discharge. Plaintiff asserts that the second mortgage is wholly unsecured as to the real property according to Title 11, Chapter 5, Subchapter I, Section 506(a). Plaintiff also asserts that modifications to rights of holders of secured claims to Title 11, Chapter 13, Subchapter II, Section 1322(b)(2) apply to the herein debt.

**PARTIES**

2. Plaintiff, Denise M West White, is a resident of Fairfield County and filed a Petition (Bankruptcy Case Number 10-64129), and an Order for Relief was entered under 11 U.S.C. Chapter 13 on December 1, 2010.

3. Defendant, US Bank Home Mortgage is subsidiary of US Bancorp, a foreign corporation incorporated in the State of Ohio with its Headquarters in Minneapolis, MN.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the proceeding pursuant to 28 U.S.C. §1334. This matter is a core proceeding as that term is defined in 28 U.S.C. §157 and arises in and is related to the Plaintiff's Chapter 13 bankruptcy case. This Court has jurisdiction over the parties and the subject matter of this case Title 11, Chapter 5, Subchapter II Subchapter I, Section 506(a) and Title 11, Chapter 13, Subchapter II, Section 1322(b)(2) and because the property is located in this jurisdiction and all parties have done business within the territorial jurisdiction of the Court.

5. Venue is proper in this Court because the Plaintiff's bankruptcy petition is pending in this forum.

### **CLAIM OF ACTION**

6. Plaintiff, Denise M West White, repeats and re-alleges paragraphs 1 through 5 as if fully rewritten herein.

7. Plaintiff filed her Chapter 13 Bankruptcy petition on December 1, 2010. The original Chapter 13 Plan Filed Under BACPA was filed on December 1, 2010 as Docket #6 and the Amended Chapter 13 Plan was filed February 25, 2011 as Docket #19.

8. The Plaintiff owns the parcel of real estate which is located 2849 Ambarwent Road, Reynoldsburg, OH 43068 (hereinafter known as "Real Estate").

9. The Plaintiff uses the real estate as her residence and has a total of two consensual mortgages on the real estate.

10. The First Mortgage is serviced by and/or held by U.S. Bank, N.A. According to the Proof of Claim #8, filed in this case on January 19, 2011, and amended on March 17, 2011, U.S. Bank, N.A. is owed \$140,306.08 on the First Mortgage.

11. According to the Schedules of Debtor's Bankruptcy Petition, US Bank Home Mortgage is owed \$9,230.00 on the Second Mortgage.

12. According to the Real Estate Value Estimate filed by the Plaintiff on December 2, 2010, as Docket #9, the value of Real Estate is \$130,000.00.

13. Using the valuation as set forth above, Real Estate is worth less than the amount owed on the First Mortgage to U.S. Bank, N.A.

14. The Second Mortgage to US Bank Home Mortgage is wholly unsecured.

15. The confirmed Plan provides for treatment of the U.S. Bank Home Mortgage Second Mortgage as wholly unsecured.

WHEREFORE, the Plaintiff prays that this Court:

i. Determine that the US Bank Home Mortgage Second Mortgage is totally unsecured and therefore modifiable by Plan.

ii. Grant judgment to the Plaintiff, Denise M West White, against the Defendant, US Bank Home Mortgage and determine that an Order that declares the US Bank Home Mortgage Second Mortgage to be void and releases it may be filed of record upon granting of a Chapter 13 discharge to the Debtor.

iii. Grant the Plaintiff such other and further relief as this Court deems just and proper.

Dated: March 28, 2011

Respectfully submitted,

/s/ Thomas M. Fesenmyer  
Thomas M. Fesenmyer (0073901)  
Attorney for Debtor  
610 S. Third St.  
Columbus, OH 43206  
(614) 228-4435  
(614) 228-3882 fax